

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate Salesperson
License Application of Anthony Edwin Smith

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A prehearing conference was conducted in this matter on August 23, 2005, before Administrative Law Judge ("ALJ") Richard C. Luis at the Office of Administrative Hearings in Minneapolis.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Commerce ("Department"). There was no appearance by or on behalf of Anthony Edwin Smith ("Applicant"). The record closed on August 23, 2005.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Is it appropriate to deny licensure as a real estate salesperson to Anthony Edwin Smith because he engaged in acts and practices that demonstrate he is untrustworthy or otherwise incompetent or unqualified to act under a real estate sales person's license within the meaning of Minn. Stat. § 45.027, subd. 7(a)(4)?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 14, 2005, the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter was mailed to Applicant Anthony Edwin Smith by first class mail to the following address: 4651 Parkridge Drive, Eagan, MN 55123.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter reads, at Page 6:

“Respondent’s failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department’s allegations contained in this Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.”

3. Mr. Smith did not appear at the Prehearing Conference on August 23, 2005, nor did anyone appear on his behalf. Mr. Smith made no prehearing request for a continuance, nor did he file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subds. 6 & 7 and 82.35, subd. 5.

2. Any of the Findings more properly termed Conclusions are hereby incorporated as such.

3. The Applicant was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of the law and rule.

4. Under Minn. R. 1400.6000, the allegations and issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show

Cause and Statement of Charges may be taken as true or deemed proved when a party defaults.

5. Under Minn. R. 1400.6000, the Applicant is in default as a result of his failure to appear at the scheduled Prehearing Conference.

6. Based on the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges, the Applicant has violated Minn. Stat. § 45.027, subd. 7(a)(4).

Based on the above Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the denial of licensure as a real estate salesperson to Anthony Edwin Smith be AFFIRMED.

Dated this 20th day of September, 2005

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Default

Under Minn. Stat. § 14.62, subd. 1 the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

R.C.L.